

No. 146. An act relating to Vermont's estate tax.

(S.55)

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Estate Taxes * * *

Sec. 1. 32 V.S.A. § 7402 is amended to read:

§ 7402. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Taxes appointed under section 3101 of this title.

(2) "Executor" means the executor or administrator of the estate of the decedent, or, if there is no executor or administrator appointed, qualified and acting within Vermont, then any person in actual or constructive possession of any property of the decedent.

(3) "Federal estate tax liability" means for any decedent's estate, the federal estate tax payable by the estate under the laws of the United States after the allowance of all credits against such estate tax provided thereto by the laws of the United States.

(4) ~~"Federal gift tax liability" means for any taxpayer and any calendar year, the federal gift tax payable by the taxpayer for that calendar year under the laws of the United States. [Repealed.]~~

(5) "Federal gross estate" means the gross estate as determined under the laws of the United States.

(6) “Federal taxable estate” means the taxable estate as determined under the laws of the United States.

(7) “Federal taxable gifts” means taxable gifts as determined under the laws of the United States.

(8) “Laws of the United States” means, ~~for any taxable year, the statutes of the United States relating to the federal estate or gift taxes, as the case may be, effective for the calendar year or taxable estate, but with the credit for State death taxes under 26 U.S.C. § 2011, as in effect on January 1, 2001, and without any deduction for State death taxes under 26 U.S.C. § 2058~~ the U.S. Internal Revenue Code of 1986, as amended through December 31, 2015. As used in this chapter, “Internal Revenue Code” shall have the same meaning as “laws of the United States” as defined in this subdivision.

(9) “Nonresident of Vermont” means a person whose domicile is not Vermont.

(10) “Resident of Vermont” means a person whose domicile is Vermont.

(11) “Taxpayer” means the executor of an estate, the estate itself, the donor of a gift, or any person or entity or combination of these who is liable for the payment of any tax, interest, penalty, fee, or other amount under this chapter.

(12) ~~“Vermont gifts” means, for any calendar year, all transfers by gift, excluding transfers by gift of tangible personal property and real property which have a situs outside Vermont, and also excluding all transfers by gift~~

~~made by nonresidents of Vermont which take place outside Vermont.~~

[Repealed.]

(13) “Vermont gross estate” means for any decedent the value of the federal gross estate as provided under the laws of the United States Section 2031 of the Internal Revenue Code, excluding the value of ~~real or tangible personal property which has an actual~~ its situs outside Vermont ~~at the time of death of the decedent, and also excluding in the case of a nonresident of Vermont the value of intangible personal property owned by the decedent.~~

(14) “Vermont taxable estate” means the ~~value of the Vermont gross estate, reduced by the proportion of the deductions and exemptions from the value of the federal gross estate allowable under the laws of the United States, which the value of the Vermont gross estate bears to the value of the federal gross estate.~~ federal taxable estate as provided under Section 2051 of the Internal Revenue Code, without regard to whether the estate is subject to the federal estate tax:

(A) Increased by the amount of the deduction for state death taxes allowed under Section 2058 of the Internal Revenue Code, to the extent deducted in computing the federal taxable estate.

(B) Increased by the amount of the deduction for foreign death taxes allowed under Section 2053(d) of the Internal Revenue Code, to the extent deducted in computing the federal taxable estate.

(C) Increased by the aggregate amount of taxable gifts as defined in Section 2503 of the Internal Revenue Code, made by the decedent within two

years of the date of death. For purposes of this subdivision, the amount of the addition equals the value of the gift under Section 2512 of the Internal Revenue Code and excludes any value of the gift included in the federal gross estate.

(15) “Situs of property” means, with respect to:

(A) real property, the state or country in which it is located;

(B) tangible personal property, the state or country in which it was normally kept or located at the time of the decedent’s death or for a gift of tangible personal property within two years of death, the state or country in which it was normally kept or located when the gift was executed;

(C) a qualified work of art, as defined in Section 2503(g)(2) of the Internal Revenue Code, owned by a nonresident decedent and that is normally kept or located in this State because it is on loan to an organization, qualifying as exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that is located in Vermont, the situs of the art is deemed to be outside Vermont; and

(D) intangible personal property, the state or country in which the decedent was domiciled at death or for a gift of intangible personal property within two years of death, the state or country in which the decedent was domiciled when the gift was executed.

Sec. 2. 32 V.S.A. § 7442a is amended to read:

§ 7442a. IMPOSITION OF A VERMONT ESTATE TAX AND RATE OF
TAX

(a) A tax is hereby imposed on the transfer of the ~~Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was a resident of this State. The base amount of this tax shall be a sum equal to the amount of the credit for State death taxes allowable to a decedent's estate under 26 U.S.C. § 2011 as in effect on January 1, 2001. This base amount shall be reduced by the lesser of the following:~~ estates of decedents as prescribed by this chapter.

(1) ~~The total amount of all constitutionally valid State death taxes actually paid to other states; or~~

(2) ~~A sum equal to the proportion of the credit which the value of the property taxed by other states bears to the value of the decedent's total gross estate for federal estate tax purposes.~~

(b) ~~A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was not a resident of this State. The amount of this tax shall be a sum equal to the proportion of the base amount of tax under subsection (a) of this section which the value of Vermont real and tangible personal property taxed in this State bears to the value of the decedent's total gross estate for federal estate tax purposes. The tax shall be computed as follows. The following rates shall be applied to the Vermont taxable estate:~~

<u>Amount of Vermont Taxable Estate</u>	<u>Rate of Tax</u>
<u>Not over \$2,750,000.00</u>	<u>None</u>
<u>\$2,750,000.00 or more</u>	<u>16 percent of the</u> <u>excess over</u> <u>\$2,750,000.00</u>

The resulting amount shall be multiplied by a fraction not greater than one, where the numerator of which is the value of the Vermont gross estate plus the value of gifts under 32 V.S.A. § 7402(14)(C) with a Vermont situs, and the denominator of which is the federal gross estate plus the value of gifts under subdivision 7402(14)(C) of this title.

Sec. 3. 32 V.S.A. § 7444 is amended to read:

§ 7444. RETURN BY EXECUTOR

(a) An executor shall submit a Vermont estate tax return to the Commissioner, on a form prescribed by the Commissioner, when a decedent has an interest in property with a situs in Vermont and one or both of the following apply:

(1) A federal estate tax return is required to be filed under Section 6018 of the Internal Revenue Code; or

(2) The sum of the federal gross estate and federal adjusted taxable gifts, as defined in Section 2001(b) of the Internal Revenue Code, made within two years of the date of the decedent's death exceeds \$2,750,000.00.

(b) In all cases where a tax is imposed upon the estate under section 7442a of this chapter, the executor shall make a return with respect to the estate tax

~~imposed by this chapter.~~ If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return (to the extent of his or her knowledge or information) a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Commissioner, such person shall in like manner make a return as to such part of the gross estate. A return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this section shall contain a statement that the return is, to the best of the knowledge and belief of the fiduciary, true and correct.

Sec. 4. 32 V.S.A. § 7475 is amended to read:

§ 7475. ~~ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS~~

~~The laws of the United States relating to federal estate and gift taxes as in effect on December 31, 2012, are hereby adopted for the purpose of computing the tax liability under this chapter, except:~~

~~(1) the credit for State death taxes shall remain as provided for under 26 U.S.C. §§ 2011 and 2604 as in effect on January 1, 2001;~~

~~(2) the applicable credit amount shall under 26 U.S.C. § 2010 shall not apply; and the tax imposed under section 7442a of this chapter shall be calculated as if the applicable exclusion amount under 26 U.S.C. § 2010 were \$2,750,000.00; and~~

~~(3) the deduction for State death taxes under 26 U.S.C. § 2058 shall not apply. [Repealed.]~~

Sec. 5. FEDERAL EXCLUSION AMOUNT; REPORT

On or before January 15, 2017, the Joint Fiscal Office shall report to the General Assembly on the impact of moving Vermont's exclusion amount under its estate tax to an amount that matches the federal basic exclusion amount under 26 U.S.C. § 2010(c)(3). The report shall identify the advantages and disadvantages for such a change, including an analysis of the revenue impact to the State, and the impact to individual taxpayers with various amounts of estate property.

See Revision note at end of Act

Sec. 6. EFFECTIVE DATES

(a) Notwithstanding 1 V.S.A. § 214, Secs. 1–4 shall take effect retroactively on January 1, 2016 and apply to decedents dying after December 31, 2015.

(b) This section and Sec. 5 (federal exclusion study) shall take effect on passage.

Date Governor signed bill: May 26, 2016

Revision note: *The Office of Legislative Council substituted “January 15, 2017” for “January 15, 2016” in the first sentence of Sec. 5 to correct a typographical error.*